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No. 90-1862

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1990

EDAP, S.A.,

*Petitioner,*

vs.

RICHARD WOLF GmbH and
RICHARD WOLF MEDICAL INSTRUMENTS CORP.,

*Respondents.*

**Petition For Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit**

## PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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[1] The list required by Supreme Court Rule 29 naming the parties' parent companies and/or subsidiaries is included at page ii of EDAP's Petition for a Writ of Certiorari.

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## INTRODUCTION

In their Brief in Opposition to EDAP S.A.'s, (hereinafter "EDAP" 's), Petition for a Writ of Certiorari, respondents Richard Wolf GmbH and Richard Wolf Medical Instruments Corp., (hereinafter collectively "Wolf"), have raised an argument not addressed in EDAP's Petition for a Writ of Certiorari. EDAP files the instant Reply Brief to respond to Wolf's newly raised argument.

## ARGUMENT

Specifically, Wolf states incorrectly in the "Questions Presented" section of its Opposition that EDAP "induced" Wolf to settle the United States litigation between the parties in reliance upon the provision of the Protective Order regarding the return or destruction of documents, (Wolf's Opposition, p.i., par.1), and that Wolf "relied upon" this provision in settling the action. (*Id.*, par.2)

Wolf further misstates in its "Summary of Argument":

> "As the Magistrate below found, (and as affirmed by the District Court and the Court of Appeals), EDAP induced Wolf's reliance and violated the protective order, . . ."

(Wolf's Opposition, p.8).

Wolf's allegations of "inducement" and "reliance" are fallacious and are not supported by the record in this case. The provision of the protective order regarding the destruction or return of documents is not referred to anywhere in the Consent Judgment entered by the Court. Nor is there any evidence that it was included in the parties' Settlement Agreement, or that it was even discussed during the parties' settlement negotiations.

Moreover, contrary to Wolf's statement in its "Summary of Argument", the Magistrate never "found" that EDAP induced Wolf's purported reliance. On the contrary, the Magistrate expressly stated.

> ". . . I *do not know* whether Wolf would have agreed to a settlement if it had known of the [document] request."

(A10).

Thus, far from finding that Wolf relied upon the provision in the protective order regarding the return or de-

struction of its documents in settling its litigation with EDAP, the Magistrate expressly stated that she *did not know* if Wolf, in fact, relied upon that provision.

Accordingly, Wolf's arguments in its Opposition to EDAP's Petition for a Writ of Certiorari rest upon false premises, and they do not deserve credence by this Court.

## CONCLUSION

Petitioner EDAP respectfully requests this Court to grant its Petition for a Writ of Certiorari to the Court of Appeals for the Federal Circuit.

Respectfully submitted,

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